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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,494	09/24/2003	Michael Knopf	1-24057	7992

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EXAMINER

WINNER, TONY H

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,494

Applicant(s)

KNOPF ET AL.

Examiner

Tony H. Winner

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6,7,9,11,12 and 16-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-28 is/are allowed.
- 6) ☒ Claim(s) 1,9 and 11 is/are rejected.
- 7) ☒ Claim(s) 4,6,7 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Acknowledgment

1. Receipt of the amendment filed 1/21/05 has been acknowledged and entered. Claims 2, 3, 5, 8, 10, and 13-15 have been canceled. New claims 16-28 have been added.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kunze et al. (U.S.P.N. 5,743,545).

Kunze a wheel mounting assembly for mounting a wheel of a wheelchair to a frame part thereof, the frame part including an upper side frame member (figure 2) and a lower side frame member, the wheel mounting assembly comprising:

a. a connecting member (12) extending generally upwardly and downwardly between the frame members and adapted to be secured thereto; and

b. a wheel-mounting member (12b - see attachment A) extending adjacent the connecting member and secured thereto and to the side frame members, the wheel-mounting member having at least one formation for supporting an axle of the wheel.

With regard to claim 9, the examiner takes position that the word "adapted" is not a positive limitation but only requires the ability to so perform. Therefore, Kunze meets all the functional language limitations in the broadest sense.

Response to Arguments

3. Applicants' arguments filed 1/21/05 have been fully considered but they are not persuasive.

The following are the applicants' arguments listed in alphabetical order.

A. The reference teaches that a connecting member and a wheel-mounting member are an integral part and therefore, these components are not adjacent one another as recited in claims 1 and 11. Further, the wheel-mounting member cannot be secured to the connecting member.

B. With regard to claim 2, Kunze fails to disclose "a wheel-mounting member on opposing sides to the connecting member.

C. With regard to claim 4, the structure in Kunze cannot be adapted to secure in alternative forward or rearward positions relative to the connecting member.

D. With regard to claim 9, Kunze lacks the teaching that a connecting member has the ability to receive a back post member.

E. With regard to claim 12, Kunze lacks the teaching that the upper and lower frame members with "each having an external cross-section shape which is non-circular and includes circumferentially spaced portions of a circumscribing circle."

F. "Kunze fails to disclose a slot as was recited in claim 15."

In response to claim 1 and 11, the office contends that the claims are being reviewed in its broadest reasonable interpretation and that Kunze discloses a wheel-mounting member (12b) is extending **adjacent** (near) the connecting member and **secured** thereto. Merriam-Webster' Collegiate Dictionary (tenth edition) defines the word secured as: To make fast (Fastened), to make something stay firmly in place. Since the claims not positively recited a connecting member is a separate structure from a wheel-mounting member and that an integral structure as taught by Kunze discloses a wheel-mounting member is firmly fixed/secure to the connecting member.

Argument for claims 2 and 15 will not be addressed since these claims have been canceled.

The office find the argument with regard to claims 4 and 12 are persuasive, and therefore is withdrawing the rejection.

With regard to claim 9, the office does not consider the word "adapted" as a positive limitation but only requires the ability to so perform. Therefore, the structure as disclosed in Kunze (recesses 12a) has the ability or could be "adapted" to receive a back post member of a wheel chair seat.

Allowable Subject Matter

4. Claims 4, 6-7, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. Claims 16-28 are allowed.

Conclusion

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Anthony H. Winner whose telephone number is (703) 306-5957. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris, can be reached at (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

7. Information regarding the status of an application may be obtained from the Patent Application Information-Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



**TONY WINNER
PATENT EXAMINER**

April 1, 2005

Attachment A

U.S. Patent

Apr. 28, 1998

Sheet 2 of 3

5,743,545

"adapted" to
receive a back
post member.

